

19. (New) A payment-based audiovisual reproduction system according to claim 11, wherein a management mode module allows recording of system operating parameters in a file stored in a hard disk in a machine format that cannot be read by the user, the data being backed up on the disk and being reread each time the system is activated.

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20. (New) A payment-based audiovisual reproduction system according to claim 19, wherein the system operating parameters file enables fixing the price of a title or number of titles for a predetermined value, the inactivity delay before starting a visual promotional mode, the inactivity delay before starting an auxiliary source, the inactivity delay before starting a selection sampling mode, the location, determined in seconds from the beginning, where the system will be able to start sampling a selection, and the duration in seconds of the sample.--

REMARKS

Upon entry of this amendment, claims 11-20 are pending. By the present amendment, claims 1-10 have been canceled without prejudice, and new claims 11-20 have been added. New claims 11-20 substantially parallel the subject matter of canceled claims 1-10, but have been rewritten to overcome the numerous informalities noted in the Office Action.

Entry of this amendment is proper under 37 C.F.R. §1.116, because the amendment are made to address the informalities noted by the Examiner in the Office

Action. As such, the amendments do not introduce any new issues requiring any further consideration and/or search. Accordingly, entry is proper, which action is earnestly solicited.

The rejection of claims 1-10 under 35 U.S.C. §112, second paragraph, is respectfully traversed. Claims 1-10 have been canceled, and the subject matter thereof has been rewritten into new claims 11-20. Accordingly, the rejection is overcome, and reconsideration and withdrawal thereof are respectfully requested.

The rejection of claims 1-5 under 35 U.S.C. §103(a) over Martin et al. (U.S. Patent No. 5,355,302, hereinafter "Martin") is respectfully traversed. Without acquiescing in the rejection, claims 1-5 have been canceled in favor of new claims 11-15. Accordingly, the rejection will be discussed with respect to the new claims.

Martin is directed to a method and apparatus for managing a plurality of computer jukeboxes at different locations from a central station. Each jukebox includes a processor for controlling the computer jukeboxes, storage and retrieval means for data, display means for selection menus, audio reproduction means for playing musical records, and a user interface enabling patrons to communicate with the processor means. The central station can be used to download musical recording data to each computer jukebox, and each computer jukebox can upload usage data to the central station.

As acknowledged in the Office Action, Martin fails to disclose, teach or suggest at least *six* critical features that are specifically recited in the claims. Instead of providing any objective teaching in the prior art or any motivation in the prior art to combine any of the relevant teachings of the prior art with Martin to achieve the claimed invention, the

Office Action merely relies on "Official Notice" of the specifically recited features. This application of Official Notice is improper and exhibits blatant impermissible hindsight reconstruction of the claims based on the teachings contained in the instant application itself.

For example, the Office Action takes Official Notice that multitasking operating systems were well known in the art. However, there is no objective teaching of this. Moreover, even if multitasking operating systems may have been known for various uses, no objective teaching has been provided that would motivate one of ordinary skill to apply a multitasking operating system to the payment-based audiovisual reproduction system of the claimed invention. Quite to the contrary, in prior art systems, typically teach the use of a plurality of processors, each having a specific task. This is because audio, and especially video, processing tend to induce significant real-time constraints. Using dedicated hardware (e.g., multiple processors) tended to alleviate this concern. It is noted that this solution (i.e., using multiple processors) is the *opposite* of using a multitasking operating system. Thus any application of "Official Notice" with respect to multitasking operating systems to the system of Martin must be accompanied by some objective teaching or motivation in the prior art for doing so.

In short, the inventors of the instant application considered the multiprocessor prior art systems and attempted various methods to overcome the problems associated with handling a continuous stream of audio and video data, and for controlling their restitution from a compressed state. The inventors devised a solution that was *a priori* impossible since restitution means need to be fed in a continuous way with data that a

multitasking system is not *per se* able to accomplish alone. Numerous solutions were identified and considered. For example, providing further buffers upstream of the restitution circuitry was considered, but there was no guarantee of avoiding a temporary lack of data in any one of the buffers; choosing extremely large buffers was also considered; choosing more size-limited buffers having a regular fixed time basis was considered, but the data rate needed for controlling the video display is not constant due to the compression algorithms, thus the size of the video buffer would need to include some margin for containing following video data. The inventors settled on a fourth solution covered by the claimed invention, namely combining priority with buffer size. In particular, the inventors found that, because video data represents a larger amount of data than audio data per time unit, and the rate of consumption of these data varies, the corresponding tasks had to be managed *asynchronously*. Consequently, the video task triggers the feeding of the video buffer, when needed. No extra memory space is needed in the video buffer, since the short delay time for receiving new data is a constant because it uses the highest priority. Furthermore, the triggering can account for any delay time, if needed.

With respect to the audio buffer, its size corresponds to an amount of consumption of audio data from the audio buffer during the transfer duration of video data into the video buffers, which "freezes" any audio transfer. Since the consumption of audio data is much smaller than that for video data, the audio buffer is kept relatively small.

From the foregoing, it is abundantly clear that the combination of features claimed is the result of an inventive process that would not have been obvious to one of skill in

the art as set forth in the outstanding rejection. In other words, the claimed arrangement permits and enables the use of a multitasking operating system where it was previously not practical to do so.

It is well established that the PTO has the burden under 35 U.S.C. §103 to establish a prima facie case of obviousness. See *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. See, *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). This it has not done. The Office Action fails to cite any prior art that remedies the deficiencies of Martin or that suggests the obviousness of modifying Martin to achieve the claimed invention. For example, the Office Action takes Official Notice that multitasking operating systems were well known in the art, but has not provided any teaching that such multitasking operating systems were applicable to the claimed audiovisual reproduction system. The other elements for which "Official Notice" has been taken are, likewise, deficient.

Instead, the Office Action relies on hindsight reconstruction of the claimed invention in reaching its obviousness conclusion. "To imbue on or ordinary skill in the art with knowledge of the invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." See

W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1543, 220 USPQ 303, 312-13 (Fed. Cir. 1983).

Furthermore, it is irrelevant in determining obviousness that all other aspects of the claim may have been well known in the art. The invention must be considered as a whole. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 220 USPQ 97, 99-100 (Fed. Cir. 1983). Rather than considering the invention as a whole, the Office Action improperly reduces the present invention to its constituent parts without providing any objective teaching in the art or motivation to combine these constituent parts to achieve the claimed invention.

It is respectfully submitted that no teaching in the prior art has been provided that shows any motivation to provide a multitasking operating system for managing and controlling audio and video data in the manner set forth in the claims. Absent such a showing, mere Official Notice that a particular item may have been known is not sufficient to render the claims obvious. This is especially the case where, as here, the inventors found a solution that the prior art multiprocessor systems from which the prior art specifically teaches away, as set forth in detail above. Therefore, it is respectfully submitted that Martin in view of the Officially Noticed items missing from Martin fail to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

The rejection of claims 6-7 under 35 U.S.C. §103(a) over Martin in view of Knowles (U.S. Patent No. 5,481,509) is respectfully traversed. Without acquiescing in the rejection, it is noted that claims 6 and 7 have been canceled in favor of new claims 16

and 17. Accordingly, the rejection will be discussed with respect to the newly added claims.

It is respectfully submitted that Knowles fails to overcome the fundamental deficiencies noted above with respect to Martin. Therefore, even if, *arguendo*, the combination of Knowles and Martin were proper, the combination nevertheless fails to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

The rejection of claims 8-9 under 35 U.S.C. §103(a) over Martin in view of Johnson et al. (U.S. Patent No. 5,282,028, hereinafter "Johnson") is respectfully traversed. Without acquiescing in the rejection, claims 8 and 9 have been canceled in favor of new claims 18 and 19. Accordingly, the rejection will be discussed with respect to the new claims.

It is respectfully submitted that Johnson fails to overcome the fundamental deficiencies noted above with respect to Martin. Therefore, even if, *arguendo*, the combination of Martin and Johnson were proper, the combination nevertheless fails to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

The rejection of claim 10 under 35 U.S.C. §103(a) over Martin in view of Johnson in view of Knowles is respectfully traversed. Without acquiescing in the rejection, it is noted that claim 10 has been canceled in favor of newly added claim 20. Accordingly, the rejection will be discussed with respect to new claim 20.

It is respectfully submitted that neither Johnson, nor Knowles, either singly or in combination, overcome the fundamental deficiencies noted above with respect to Martin. Therefore, even if, arguendo, the combination of Martin, Johnson and Knowles were proper, the combination nevertheless fails to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

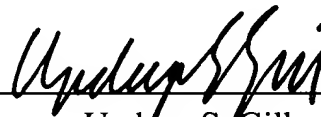
In view of the foregoing, it is respectfully submitted that the entire application is in condition for allowance. Favorable reconsideration of the application and prompt allowance of the claims are earnestly solicited.

Should the Examiner deem that further issues require resolution prior to allowance, the Examiner is invited to contact the undersigned attorney of record at the telephone number set forth below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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